IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.236 OF 1996

State of Maharashtra) ... Appellant
(Orig. Complainant)

Versus

1. Shri Kotapalli Madhusudan Rao,)
R/o. Sevadal Ali, Tal. Roha, Dist.)
Raigad.)
2. Shri Krishna Manik Pawar,)
R/o. Khari, Tal. Roha, Dist.)
Raigad.) ... Respondents

Ms. M.M. Deshmukh, A.P.P. for the appellant.

Ms. Dhanashree M. Shende h/f. Mr. N.V. Gangal and Mr. P.M. Patil for the respondents.

CORAM : SMT. RANJANA DESAI, J.

DATED : 14TH AUGUST, 2007.

ORAL JUDGEMENT:-

1. The State of Maharashtra has challenged the judgment and order dated 13/12/1995 passed by the Judicial Magistrate, First

Class, Roha in Summary Criminal Case No.687 of 1991 whereby the respondents (original accused 1 and 2 respectively, hereinafter for convenience referred to as “A-1” and “A-2” respectively) were acquitted of the offences punishable under section 2 of the Forest Conservation Act, 1980 and under section 26(g)(b) read with section 42 of the Indian Forest Act.

2. The case of the prosecution as disclosed from the evidence of the complainant PW-6 Ankush Deshmukh, the Range Forest Officer is that he was serving as a Range Forest Officer at Roha. Village Khargaon comes in his jurisdiction. In Khargaon, Compartment No.260, Old Coup No.8, there is a quarry (for short, “the said quarry”). A-1 got permission from the Central Government to extract stones from the said quarry on royalty basis for three years. The permission accorded by the Central Government came to an end in the month of March, 1990. Though directed by the Forest Department, A-1 did not hand over the said quarry to the Forest Department. According to PW-6 Ankush, on 26/4/1991, he, Sub-Divisional Forest Officer, Mr. Balki and Round

Officer Mr. Ghosalkar were taking round in the forest area of village Khargaon. At that time, A-2 was working in the said quarry. He asked A-2 whether they had permission to extract the stones from the said quarry. He stated that his employer A-1 has asked him and other labourers to work in the said quarry. PW-6 Ankush then called two panchas and prepared spot panchanama, which is at Ex-23. According to him, while preparing the panchanama, A-1 came there. He asked A-1 whether he has permission to extract the stones from the said quarry. According to him, A-1 stated that he has no such permission. According to him, A-1 signed the panchanama. He then seized the crushing machine, truck and crushed stones. According to him, A-1 agreed that he would not continue with the work and, therefore, he handed over the seized articles to him and took receipt from him. PW-6 Ankush has further stated that on 2/5/1991, A-1 repeated the same act. He seized the articles used by A-1 and registered offence against him being Crime No.15 of 1991. Then on 3/5/1991, A-1 filed Civil Suit bearing R.C.S. No.66 of 1991 against the Forest Department and obtained a status-quo order against the Forest Department. The

Forest Department filed Misc. Civil Appeal No.72 of 1991 in the District Court, Senior Division, Raigad at Alibag. The status-quo order granted by the trial court was vacated on 30/10/1991.

3. According to PW-6 Ankush as per the direction of his superiors, he went to the same spot on 31/10/1991. He seized materials lying on the spot. He took measurement of digging done by A-1 from 4/5/1991 onwards. There was one truck standing at the spot bearing No. MRS 8986. There was a crushing machine and one diesel engine and there was one truck which was not in a running condition. He seized the trucks and other articles under a panchanama. On that day, he prepared three panchanamas. They are Ex-24, Ex-25 and Ex-26. Ex-24 is the spot panchanama. Ex-25 is the panchanama under which articles found on the spot and two truks were seized. Ex-26 is the panchanama under which the truck bearing No.MRS 8986 was shifted to Forest Range Office, Roha for safety. He then filed a complaint against both the accused under sections 26(g)(h) and 42 of the Indian Forest Act and under section 2 of the Forest Conservation Act.

4. The defence of A-1 as disclosed from the statement recorded under section 313 of the Code of Criminal Procedure, is that the Environment & Forest Department of the Central Government had given him Coup No.8 of reserve forest area for running the said quarry for three years. Before the said period of three years would come to and end, he had sent proposals in consonance with orders and directions of the Environment and Forests Department of the Central Government for allotment of alternative reserve forest area to Authority of Divisional Forest Office, Roha but that Authority created lacuna in the proposal and sent an incorrect proposal to the Central Government. According to A-1, therefore, he could not get permit from the Central Government within the time limit. He, therefore, filed a complaint against the authorities of the Central Government. The Forest Department Officers got annoyed with him because he had filed the said complaint. They have, therefore, filed a false case against him. The defence of A-2 is that he was working as a watchman of A-1 and that he has been falsely involved in the case.

5. In support of its case, the prosecution examined nine witnesses out of them four witnesses are panch witnesses and five witnesses are forest officers. The panch witnesses have turned hostile. The trial court found it unsafe to rely on the evidence of the forest officers. The trial court was also not impressed by the evidence of the forest officers and, in the circumstances, the accused were acquitted. Being aggrieved by the said judgment and order, the State of Maharashtra has filed the present appeal.

6. I have heard Ms. Deshmukh, the learned A.P.P. appearing for the State and Mr. Gole, the learned counsel appearing for the respondents. With the help of the learned counsel, I have gone through the evidence and the record of the case.

7. Before I deal with the rival contentions, it is necessary to bear in mind that this is an appeal against an order of acquittal. It is well settled that if the view taken by the trial court is a reasonably possible view and the judgment of the trial court is not perverse,

the superior court should not interfere with it in an appeal against acquittal by substituting its own view for it. In ***State of Rajasthan v. Raja Ram, (2003) 8 SCC 180***, while dealing with an appeal against acquittal, the Supreme Court has observed that generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The Supreme Court has further observed that the golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The Supreme Court has further clarified that the principle to be followed by the appellate court while considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable, it is a compelling reason for interference not otherwise. Keeping these principles in mind, I will approach the present appeal.

8. I have already reproduced the gist of the evidence of the complainant PW-6 Ankush. In the cross-examination, this witness has admitted that the Environment and Forest Department of the Central Government had given permission to A-1 to run the said quarry for a period of three years i.e. from 1/4/1987 till April, 1992. He has also admitted that the Authority of Environment & Forest Department of Central Government had called for new proposal for renewal of A-1's permission. He has also affirmed in the cross-examination that A-1 had obtained injunction order against the Forest Department and that was in operation till 30/10/1991.

9. The second witness of the Forest Department is PW-4 Ghosalkar, who was with PW-6 Ankush on 26/4/1991. He has also spoken about spot panchanama which was prepared by PW-6 Ankush. He has admitted that the said quarry was previously given to A-1 to extract stones on royalty basis. Though his signature appears on Ex-24, Ex-25 and Ex-26, in his evidence he has not stated that he had gone to the said quarry on 31/10/1991.

10. The next witness of the prosecution is PW-5 Damodar More, who was serving as a Forest guard. He was with PW-6 Ankush on 31/10/1991. He is a signatory to panchanamas Ex-24, Ex-25, Ex-26. He has identified his signatures on the said panchanamas. The prosecution has then examined PW-8 Govind Balki, who was working as Assistant Conservator Forest Officer. He has also stated that he along with the complainant Ankush visited the said quarry and found the work of crushing the stones going on in the said quarry. He has also stated that the spot panchanama was prepared. He has, however, not given the date on which he visited the site. He has also not specifically stated which panchanamas were carried out in his presence. At least, from his evidence, it is not clear whether he has witnessed panchanama Ex-23, which was allegedly prepared on 26/4/1991 or panchanamas Ex-24, Ex-25 and Ex-26 which were prepared on 31/10/1991. In his cross-examination, he has admitted that prior to the year 1982, the Central Government had given permission to A-1 to run the business of the said quarry. He has also admitted that A-1 has filed

civil suit against the Forest Department with regard to the said quarry. He has stated that he cannot give the exact date on which the incident has taken place. I find the evidence of this witness to be extremely vague. He does not categorically state which of the panchanamas were drawn in his presence.

11. The prosecution has then examined PW-9 Vijay Hinge, who was serving as Assistant Conservator of Forest, Bhandara Division. He has stated that he had gone to the said quarry on 31/10/1991 to take preventive action against the accused. He has deposed about the preparation of three panchanamas being Ex-24, Ex-25 and Ex-26 on that day. In his cross-examination, he has admitted that the Environment and Forest Department of the Central Government has given permission to A-1 for three years to run the quarry in the reserve forest in Coup No.8.

12. It is pertinent to note that PW-1 Dhasade and PW-2 Subhash Patil, who are panchas to panchanama Ex-23 and PW-3 Ramchandra Patil and PW-7 Tukaram Yespatil, who are panchas

to panchanamas Ex-24, Ex-25 and Ex-26 have turned hostile. Therefore, so far as these panchanamas are concerned, the prosecution is solely relying on the evidence of the forest officers. The question is how far reliance can be placed on the interested testimony of the forest officers.

13. It is true that in given circumstances, if panchas turn hostile, the court can place reliance on the evidence of the police officers or forest officers if their evidence inspires confidence and if it is found that the officers have no axe to grind against the accused. To ascertain this, the background of the case will have to be taken into consideration. Almost all the prosecution witnesses have accepted that the Central Government had permitted A-1 to run the said quarry for three years i.e. form 1/4/1987 till April, 1990. Complainant PW-6 Ankush has admitted that the Authority of Environment and Forest Department of Central Government has called for a new proposal for renewal of permission of A-1. It is the case of A-1 that he had submitted the proposal to the Central Government through the Forest Department. However, the Forest

Department created some lacuna in the proposal on account of which he could not get renewal of the Central Government permission before its expiry. After admitting that A-1 was given permission by the Central Government when suggestion is put by the defence to the forest officers that A-1 had applied for renewal of permission and that the Forest Department had not forwarded the proposal promptly due to lacuna, all the forest officers have given very evasive replies. Against the background of the fact that the Central Government did permit A-1 to run the said quarry for three years and in fact A-1 was carrying on the said business under that permission it is inconceivable that A-1 would not apply to the Central Government for extension of his permission. The blanket denial of this suggestion by the prosecution witnesses make their testimony suspect.

14. Besides, it is also important to note that A-1 has filed R.C.S. Suit No.66 of 1991 against the Central Government and the Forests Department on 3/5/1991. On 7/5/1991, a status-quo order was passed in that suit. On 27/8/1991, the Court had passed an

order of injunction restraining the Forest Department from interfering with the activities of A-1. Appeal was filed by the Forests Department against the said order in the District Court of Raigad and on 30/10/1991 that injunction order is vacated. Undoubtedly, a civil litigation is pending between the parties. It is not stated before me that civil litigation has come to an end. Therefore, it appears that the civil court is going to deal with the rights of the parties. It is also pertinent to note that on 30/10/1991 when the injunction order was vacated immediately on 31/10/1991, the officers have gone to the site and prepared panchanamas. This conduct also creates some doubt about the credibility of the prosecution case. It is not possible for this court to opine on the rights of the parties. The civil court shall adjudicate that issue. However, in my opinion, the prosecution has failed to prove its case beyond reasonable doubt. Since the panchas have turned hostile, against the background of the civil litigation, it is not possible for this court to place implicit reliance on the evidence of the forest officers and hold the accused guilty. The accused must, therefore, get benefit of doubt. I am of the opinion that the view

taken by the trial court is a reasonably possible view which cannot be interfered with in an appeal against acquittal. The appeal is, therefore, dismissed.

[SMT. RANJANA DESAI, J.]